

ORIGINAL

IN THE UNITED STATES DISTRICT COURT **U.S. DISTRICT COURT**
FOR THE NORTHERN DISTRICT OF TEXAS **NORTHERN DISTRICT OF TEXAS**
DALLAS DIVISION

DAVID OVERBEY

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Petitioner-Defendant

v.

UNITED STATES OF AMERICA

CA-3:04-CV-2339-H

CR-3:01-CR-296-H

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Respondent

FILED

OCT 28 2005

CLERK, U.S. DISTRICT COURT

By _____ Deputy

[Signature]

O R D E R

Before the Court are the Findings, Conclusions, and Recommendation of the United States Magistrate Judge, filed June 22, 2005, and Petitioner-Defendant Overbey's ("Overbey") grounds for relief (Objections), filed July 7, 2005.

The Court has made the required independent review of the pleadings, files, and records in this case; the carefully considered and well supported Findings and Conclusions of the Magistrate Judge; and Overbey's Objections. Having done so, the Court rules as follows:

The Findings and Conclusions of the Magistrate Judge with respect to Overbey's Objections Nos. 1, 3 and 4 are correct and they are **ADOPTED** as the Findings and Conclusions of the Court. With respect to Objection No. 2, it appears that the Magistrate Judge may have misinterpreted it. However, the Court, having considered the Objection precisely as stated, finds it to be without merit and it is accordingly **OVERRULED**.

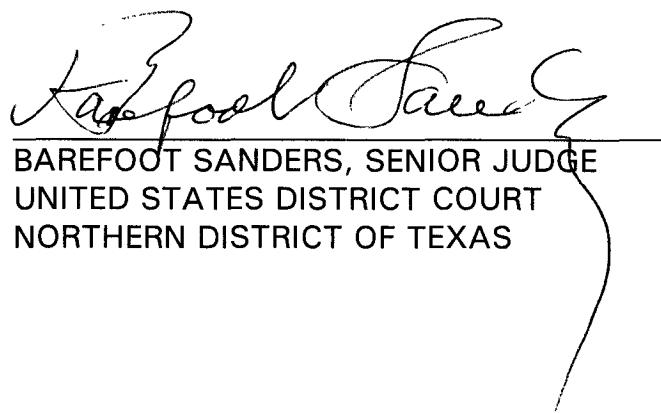
With respect to Overbey's 5th ground in support of his Petition for Relief, it is clear that Overbey's trial counsel was egregiously ineffective when he advised Overbey with respect to the punishment to which Overbey would be exposed in the event he chose to proceed to trial on a not guilty plea. The evidence shows, and the Court finds, that had Overbey been correctly advised he would have accepted the plea agreement

proposed by the Government and would have been facing a sentence of 10 to 13-1/2 years (rather than the 324 months which he received after proceeding to trial).

Overbey's 6th and 7th grounds for review, i.e., objections, are **OVERRULED** as moot in light of the foregoing rulings.

SO ORDERED.

DATED: October 28, 2005.



BAREFOOT SANDERS, SENIOR JUDGE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS